

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CIGNA CORPORATION,

Plaintiff,

v.

No. Case No. 4:23-cv-00093-SEP

AMY BRICKER and CVS PHARMACY,
INC.,

Defendants.

**DEFENDANTS' COMBINED MOTION TO CONFIRM
LIFTING OF STAY AND SUPPORTING MEMORANDUM**

Defendants Amy Bricker (“Ms. Bricker”) and CVS Pharmacy, Inc. (“CVS”) (sometimes, collectively, “Defendants”), move this Court for the entry of an order confirming the lifting of any stay on district court proceedings herein *nunc pro tunc* to June 26, 2024, and in further support state:

1. The docket of this cause (*see* relevant excerpt appended as Exhibit A) reflects that District Court proceedings are stayed. Defendants confirmed this by consulting PACER records after inquiring on December 18, 2024 of one of the Court’s clerks regarding the status of Defendants’ November 7, 2024 Motion to Clarify and/or Amend Preliminary Injunction Order (ECF No. 231, the “Motion to Clarify”), and learning that the Court’s docket reflected a pending stay of all proceedings.

2. Defendants took a timely interlocutory appeal to the United States Circuit Court of Appeals for the Eighth Circuit from this Court’s June 5, 2023 Preliminary Injunction Order (ECF No. 209), and thereafter, this Court, the Honorable Ronnie L. White, issued the following order (the “Stay Order”):

ORDER: IT IS HEREBY ORDERED that the Order Setting Rule 16 Conference, dated June 12, 2023, is VACATED. (ECF No. 213). IT FURTHER ORDERED that all activity and pending deadlines in this case are STAYED *until such time as the United States Court of Appeals for the Eighth Circuit renders a decision regarding the defendants' appeal*. Signed by District Judge Ronnie L. White on 06/26/2023. (KCD) (Entered: 06/26/2023)

ECF No. 220 (emphasis added).

3. The Stay Order (ECF No. 220), thus appears by its own terms to have expired upon the Eighth Circuit rendering a decision regarding Defendants' appeal.

4. One year after entry of the Stay Order, the Eighth Circuit affirmed this Court's Preliminary Injunction, and on June 26, 2024 issued its mandate as follows:

MANDATE of USCA as to Notice of Appeal filed by CVS Pharmacy, Inc. USCA #:23-2455 In accordance with the judgment and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter. Appeal is AFFIRMED. (TMT) (Entered: 06/26/2024)

5. There having been no bases for these proceedings to be stayed since June 26, 2024, the District Court having in its Stay Order (ECF No. 220) stated that its stay would be lifted on termination of appellate proceedings, Defendants now respectfully request entry of an order confirming the lifting of any stay on these proceedings *nunc pro tunc* to June 26, 2024, for, among other purposes, the Court's disposition of Defendants' November 7, 2024 Motion to Clarify (ECF No. 231).

6. Significantly, Defendants' Motion to Clarify seeks to resolve a perceived ambiguity in the Preliminary Injunction Order as to the expiration of its restraint on Defendant Ms. Bricker's employment. Specifically, as drafted, the Preliminary Injunction Order may be read to prohibit Ms. Bricker from engaging in certain gainful employment throughout the healthcare industry even after the February 3, 2025 expiration of the 2-year covenant not to compete that the Preliminary Injunction enforced and which was the sole basis for the Preliminary Injunction Order.

7. Because Ms. Bricker has multiple work opportunities with organizations for which she would not render services until after February 3, 2025, she and those organizations require this Court's clarification that its Preliminary Injunction will no longer prohibit Ms. Bricker from working effective February 3, 2025, which is the 2-year anniversary of Ms. Bricker's separation from employment with Express Scripts, the affiliate of Plaintiff Cigna Corporation by which she was formerly employed.

WHEREFORE, Defendants Amy Bricker and CVS Pharmacy, Inc. move this Court for the entry of an order confirming the lifting of any stay on district court proceedings herein *nunc pro tunc* to June 26, 2024. Defendants further respectfully request such other, further, or additional relief in their favor as the Court deems fair, just and equitable in the circumstances.

Dated: December 20, 2024

Respectfully submitted,

Counsel for Ms. Bricker
ARMSTRONG TEASDALE LLP

Counsel for CVS
DOWD BENNETT LLP

By: /s/ Jeffrey L. Schultz
William Ray Price, Jr. #29142MO
Jeffrey L. Schultz #56553MO
ARMSTRONG TEASDALE LLP
7700 Forsyth Blvd., Suite 1800
St. Louis, Missouri 63105
(314) 621-5070
(314) 621-5065 (fax)
wprice@atllp.com
jschultz@atllp.com

By: /s/ John D. Comerford
John D. Comerford #60164MO
7676 Forsyth Blvd., Suite 1900
St. Louis, Missouri 63105
(314) 889-7311 (phone)
(314) 863-2111 (facsimile)
jcomerford@dowdbennett.com

VEDDER PRICE PC

FOLEY HOAG LLP

Nicholas Anaclerio (IL# 6187889)
pro hac vice
Allison Czerniak (IL# 6319273)
pro hac vice
222 North LaSalle Street, Suite 2600
Chicago, Illinois 60601-1003
(312) 609-7538 (Anaclerio phone)
(312) 609-7626 (Czerniak phone)
nanaclerio@vedderprice.com
aczerniak@vedderprice.com

Michael L. Rosen (BBO# 559954)
pro hac vice
Emily J. Nash (BBO# 696460)
pro hac vice
Laura D. Gradel (BBO# 692315)
pro hac vice
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1231 (Rosen phone)
(617) 832-3067 (Nash phone)
(617) 832-1784 (Gradel phone)
mrosen@foleyhoag.com
enash@foleyhoag.com
lgradel@foleyhoag.com

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2024 the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system.

/s/ Jeffrey Schultz